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ABSTRACT

In the framework of its activities concerning marketing practices, the Committee on Consumer Policy, Organization for Economic Co-operation and Development, has examined the subjects of advertising directed at children and endorsements in advertising. These subjects raise common problems in member countries and result in a variety of responses. The report on advertising directed at children is based on a questionnaire to which 19 member countries responded; the report on endorsements in advertising has been drawn up on the basis of information received from 16 member countries. Both reports examine the various methods of advertising employed, the major areas of concern, and the existing regulatory frameworks and voluntary arrangements. Both also suggest a number of policy solutions for consideration by member countries. Appendices to the first study report results of a survey on advertising directed toward children in Japan and results of a recent study in Sweden on toy packaging. (Author/RH)

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ADVERTISING DIRECTED AT CHILDREN

ENDORSEMENTS IN ADVERTISING

Reports by the Committee
on Consumer Policy

PS 013270

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ATTESTATIONS À DES FINS PUBLICITAIRES

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In the framework of its activities concerning marketing practices, the Committee on Consumer Policy has examined the subjects of advertising directed at children and endorsements in advertising. These areas were selected because of the common problems they raise in Member countries and the variety of means Member countries employ to deal with them.

The report on advertising directed at children is based on a questionnaire to which nineteen Member countries responded : Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Japan, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.

The report on endorsements in advertising has been drawn up on the basis of information received from sixteen Member countries : Australia, Austria, Belgium, Canada, Finland, France, Germany, Ireland, Japan, Netherlands, New Zealand, Norway, Sweden, Switzerland, the United Kingdom and the United States.

Both reports examine the various methods of advertising employed, the major areas of concern, the existing regulatory frameworks and voluntary arrangements, and suggest a number of policy solutions for consideration by Member countries.

ADVERTISING DIRECTED TO CHILDREN

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INTRODUCTION

There has been a growing public concern over the effects of advertising directed to children. This concern has centred around two major issues :

i) the short-term impact of advertising on buying decisions of children and consequent demands made upon their parents ;
ii) the long-term impact on the development and future behaviour of children exposed to sophisticated marketing techniques.

The studies carried out by researchers in this field reveal the wide divergence of opinion between parents, advertisers, psychologists, academics and government agencies over the influence on children of such advertising. It is recognised that the child is subject to a multitude of other media influences but it is the purpose of this report to examine the special nature of advertising directed to children which has aroused current debate.

A. DEFINITION OF ADVERTISING DIRECTED TO CHILDREN

A major difficulty in defining the field of interest is in the definition of what constitutes a child. Levels of perception increase with age and it is necessary to determine whether there are similar concerns with the young child (0-6 years) with children from 6-14 years or with older children 14-18 years. For the purpose of this report, it has been decided to limit the area of interest to children up to the age of 14 on the basis that serious concern has been expressed in some Member countries over the effects of advertising directed at children below this age. This limit accords with the definitions found in some Member countries. For example, the Canadian Broadcasting Corporation has used the following definition of advertising directed at children :

> "A message on behalf of a product or service where children under 13 years of age are the only users or form a substantial part of the market as users and the message is presented in a manner that appeals primarily to children. (Appeal being manifested by choice of approach, visual content, vocabulary, etc.)"

However such a definition is not entirely satisfactory for the purposes of this study. Some believe that consideration should only be given to products intended for or bought by children. Others believe that broader attention should be directed to messages that appeal to children as well as to adults. While the Committee has not framed its own definition, it has concentrated on the most important issues raised in the course of the debate on advertising directed at children.

A further consideration is the question of the extent of the advertising practices examined here. It is recognised that in addition to advertising, other marketing practices and merchandising techniques to children may cause concern. Some of these practices have been the subject of earlier reports by the Committee (1). The scope of this study will be limited to advertising directed to children through television, radio and the printed media.

It is recognised that the use of children as child actors in advertising is a subject of concern in some Member countries. The use of children is particularly effective in exploiting the natural feelings of parents for the safety and health of their children. However more general attention in Member countries has been paid to the effects of advertising which either attempts to directly influence consumption habits of children or is directed at children to influence parental purchasing behaviour. It is these latter issues upon which this report will concentrate although references will be made to research on the use of children in advertising.

B. INVOLVEMENT OF CHILDREN IN ADVERTISING

It is important also to determine the differing aspects of the involvement of children with respect to advertising. Children can be considered as :

a) targets as real or potential customers ;
b) targets to place pressure on parents ;
c) as a promotional tool in advertising.

A survey of available research has revealed only one study which has analysed the involvement of children with regard to advertising across a range of media. In 1977 the Belgium Family League conducted a survey which forms an appendix to a study by the Family Organisation Committee for the European Communities (2). 900 advertisements were

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1) Mail Order Trading and Other Selected Distant Selling Methods, OECD, Paris, 1978.
Premium Offers and Similar Marketing Practices, OECD, Paris, 1977.
2) Advertising and the Child, Young Buyer and Advertising Target, Family Organisation Committee for the European Communities, October 1977 at Appendix 2.

analysed from all media and classified according to type of medium, how the child is involved - either as potential purchaser, target to place pressure on parents or advertising agent, and the age of the child involved. The survey concluded that 55 per cent of advertisements use the child as a sales argument (child-actor). The child was targeted as consumer-buyer in 19 per cent of advertisements and used to place pressure on parents in 24 per cent of advertisements analysed. The largest proportion (52 per cent) of advertisements are targeted at the 5 to 9 and 9 to 13 age categories.

C. MEDIA USED IN ADVERTISING DIRECTED TO CHILDREN

The impact of advertising directed to children varies depending upon the media used. Such advertising can be found in a wide range of media including posters, pamphlets, packaging, the press, cinema advertising, radio and television, etc. While it is the last mentioned that has created the greatest debate it must be remembered that in some countries e.g. in Belgium and the Nordic countries except Finland, television advertising is forbidden.

In some countries concern has been directed towards advertising in other media in addition to those mentioned above. For example in the Nordic countries attention is being given to commercial material in schools. Commercial enterprises, associations and other business institutions have for long recognised the value of contributing educational material to schools. Teachers welcome such material because it is often presented in an attractive form and is a useful educational aid requiring little adaptation. Businesses recognise that such efforts may help to improve their image within the community as well as encouraging greater awareness among children of the relevant field involved. Some concern has been expressed as to whether schools are a legitimate forum for promoting such ideas. The Nordic Government Officials Committee on Consumer Affairs has prepared a study of commercial material in schools in Denmark, Finland, Norway and Sweden. The study took the form of interviews with over 400 teachers in four Scandinavian countries. The study concluded that 75 per cent of consumer affairs teachers use such material and most do not draw the commercial nature of the material to the attention of the children who are generally unaware of its commercial origin.

Two media are prominent in advertising directed to children : the printed media i.e. magazines, comics, etc. and television/radio.

1. The Printed Media

In many Member countries, advertising in the printed media still forms the major proportion of total advertising expenditure notwithstanding the dramatic increase in expenditure on advertising on

television and radio. Use of children as a promotional tool is well-developed in specialist printed media such as women's magazines where advertising appeals directly to parental roles and responsibilities.

The survey by the Belgium Family League identified the various media used for advertising involving children and analysed the categories concerned. It noted that in the printed media four kinds of publications stand out : women's weeklies (28 per cent) ; family weeklies (19 per cent) ; weeklies for young people (14 per cent) and monthlies (12 per cent). Young consumer-buyers are reached in decreasing order, by weeklies for young people (31 per cent), monthlies for young people (29 per cent) and family weeklies (19 per cent). Advertisements directed at children to place pressure on parents are to be found in weeklies for young people (28 per cent) ; family weeklies (19 per cent) ; women's weeklies (21 per cent). The survey concluded that one in five advertisements involving children are to be found in publications intended specifically for young people (1).

A paper presented to a United Kingdom Advertising Association Academic Seminar in May 1972 indicated that about £ 1.7 million was spent on advertising in children's comics and magazines about 1 per cent of total consumer press advertising (£180 million) in that year (2). It was estimated that in the course of a month about 90 per cent of all children will have read at least one comic or magazine which carries advertising. The results of an attitude survey were reported in which it was found that 32 per cent of parents thought advertisements in comics were a bad thing.

2. Television and Radio

Television has powers of persuasion possessed by no other medium. It has the potential to bring into the home programmes which give pleasure, enjoyment and intellectual involvement. From an advertiser's viewpoint, television can place a salesman in every home in the knowledge that the commercial message will reach a captive audience of a magnitude incapable of being reached by any other advertising device.

In addition to its undoubted pervasiveness, television has unique features that no other medium possesses. "It is intimate, peculiarly dramatic, compelling and available to all ages at times when viewers are in their most relaxed and receptive moods. Its impact is enhanced by its ability to use at the same time the devices of pictures, music and speech. The medium's ability to influence and persuade is therefore immense" (3).

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1) Belgium Family League Survey at p. 7.
2) Advertising in the Children's Press by R.A. Davie, I.P.C. Magazines Limited, AA Academic Seminar, May 1972.
3) Children and Television, Senate Standing Committee on Education and the Arts. Canberra, Australia, 1978 at p. 9.

Radio can have a similar persuasive influence on listening audiences although it may not be as dramatic as television. In addition, radio advertising may not be targeted so directly at children in the low-age groups, they may only occasionally form a major proportion of listeners. However, advertisers make extensive use of advertising messages directed at children on radio, particularly during popular music programmes where younger listeners often predominate.

I. CHARACTERISTICS OF ADVERTISING DIRECTED AT CHILDREN

Despite the concentration of advertising expenditure in both the printed media and television/radio, it is the latter that has attracted the most interest in the context of advertising directed at children. The majority of households now own television sets and attention has been turned to television because of its power and pervasiveness as a means of communication. Notwithstanding the many differences in the nature of the television services offered in different Member countries, there appears to be some similarity in the television viewing habits of children.

A. EXPOSURE TO TELEVISION ADVERTISING

In the United States, in 1977, the average child between the ages of two and five watched 25 hours and 36 minutes of television per week or over 3 hours per day. Older children, aged 6 to 11 watched slightly more, 25 hours and 41 minutes per week (1). This represents over 1,300 hours per year or more time than the 6 - 11 group spends in the classroom allowing for the fact that schools close down for weekends and vacations. In Canada, young children (two to six years) view television for about 20 hours per week while older children view for about 22 hours per week. (Canadian Broadcasting Corporation, 1973 and 1975). Research in Japan in 1971 indicated that younger children view for about 2 hours per day. The results of more recent research are given in Annex I. Research in 1976 indicated that children in the United Kingdom viewed for 2.75 hours per day and older children (12 - 15 years) about 3 or 3.5 hours per day (2). In Australia, surveys of viewing habits of Sydney schoolchildren revealed the average child viewed for 20 hours 48 minutes per week, or 2 hours 58 minutes per day in 1976 (3).

A report by the National Science Foundation in the United States concluded that a majority of children are watching television regularly before age 4.

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1) A.C. Nielsen Company, Inc., "The Television Audience (1977).
2) Children and Television at p. 18.
3) Tindall, Reid and Goodwin, Audio-visual Centre, Sydney Teachers College.

The report states that "throughout the preschool years, television time far exceeds the total of all other media time ... Two-thirds of all children are already television viewers before they have much experience with movies. Even at the age of 10 years, when they are making some use of all media, television is the only one they are using day after day. At age 10, three-fourths of all children as we discovered, will be likely to be watching television on any given day. This is more than twice the percentage for any other medium at that age" (1).

Children are exposed to large numbers of commercial advertisements where such advertising is permitted. For example, the National Science Foundation Report estimated that in the United States children view an average of 20,476 commercials per year and that children between 6 and 11 view an average of 19,236. This amounts to about 3 hours of television advertising per week.

It should also be noted that significantly large numbers of children in the 5 - 12 age category watch television out of children's or family viewing times and that many watch late at night. An Australian report based on a sample survey of the viewing public showed that at least 22 per cent of children in the under fourteen age category usually watched television beyond 8.30 p.m. (2).

It also appears from some studies that children in the lower socio-economic groups are on average heavier viewers than their higher socio-economic counterparts. An Australian study (3) revealed the following results by dividing children into three socio-economic groups :

- lowest group : 25 - 30 hours per week
- middle group : 20 - 25 hours per week
- highest group : 15 - 20 hours per week

Television then has emerged as the dominant experience in the lives of most children, monopolising time more than any other single activity apart from sleep or school. However, there is particular concern with the estimated 20 per cent or more of children who view in excess of 30 and sometimes as high as 80 hours a week.

An Australian report described these children as follows : "Apart from their long hours before the television screen, these children also tend to exhibit certain social characteristics that leave them more vulnerable to the medium's influence than their average or light viewing counterparts. They are usually withdrawn. They do not relate very well with their parents or siblings, do not do very well

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1) National Science Foundation, Research on the Effects of Television Advertising on Children (1977).
2) Attitudes to Television, Australian Broadcasting Control Board, Melbourne, 1975.
3) Television's Children, Tindall and Reid, Audio-Visual Centre, Sydney Teachers College.

at school, have few close friends and very little peer group interaction. They tend to come from the lower socio-economic groups and their viewing habits are largely unsupervised by their parents. These children tend to read few books or newspapers. Television becomes virtually their sole companion and their main input of information and entertainment. These children are, therefore, particularly vulnerable to the influence of television and the ones at greatest risk of being harmed by any negative influence of the medium" (1).

In Switzerland, a 1973 study indicated that between 7 p.m. and 9.30 p.m. when advertising was produced in four blocks, 14 per cent of children between 3 and 6 years old were watching, 30 per cent between 7 and 10; 36 per cent between 11 and 13 and 35 per cent between 14 and 16. The highest rate was achieved in the French-speaking part of Switzerland where 58.4 per cent of children were watching at around 7.30 p.m.

B. PRODUCTS INVOLVED

The range of products involved in advertising directed at children appears to be fairly limited. In the United States according to the National Science Foundation Report, 25 per cent of the advertising is for candy/sweets e.g. cakes, cookies, fruit drinks ; another 25 per cent is for "cereals" and another 10 per cent is for "eating places", principally fast food restaurants which feature in addition to hamburgers or fried chicken, sugared products such as "thick shakes", carbonated soft drinks, and assorted desserts. The remaining major category is toys where commercials are concentrated most heavily just prior to Christmas.

The survey conducted by the Belgium Family League indicated for advertising directed to children in all media, the products which represented the highest figures were food products (15.49 per cent), games (11.92 per cent), clothing and shoes (11.59 per cent), sweets and snacks (10.59 per cent). The "games" item should not be accorded great importance since part of the survey was conducted at Christmas.

The survey also analysed the distribution of products and the target group. For example, for consumer-buyers, there were four leaders - sweets and snacks, followed by cosmetics, health and hygiene products, books and magazines, and finally, school supplies. For advertisements implying that children place pressure on parents, games (29.35 per cent), food products (21.1 per cent), sweets and snacks (17.4 per cent) form the major categories.

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1) Children and Television, at p. 27.

It is also interesting to note figures produced in the United Kingdom on expenditure of children up to the age of 14. Children were asked to name the three main things on which they spend their money. These figures are not necessarily correlated to exposure to advertising.

MAIN THINGS MONEY IS SPENT ON AGE 7-14

(% Mentioning)

	All %	Boys	Girls	7-8	9-10	11-12	13-14
Sweets etc.	73	74	72	77	78	73	65
Savings	36	34	38	28	39	35	42
Crisps	18	17	19	20	20	15	16
Comics	18	18	18	12	24	21	18
Ice Cream	13	13	13	19	12	14	7
Soft Drinks	9	12	6	7	8	10	11

Source : Carrick James Market Research, 1977.

C. SELLING TECHNIQUES EMPLOYED

The major selling techniques employed in children's television advertising in the United States have been identified in two studies (1), and the National Science Foundation report. These techniques include the following :

i) Magical promises that a product will build muscles or improve athletic performance.

Certain commercials for food products imply that the product will build muscles or increase athletic abilities. It is suggested that most children deny that they believe them but when the question is asked why commercials make them want the product, some of them say : "because it makes strong muscles", or "because it makes you run fast". "The best hypothesis seems to be that on a rational level children know these claims are not literally true, but the commercials have succeeded in creating an aura about the brand that gives the brand a special and highly desirable significance" ;

ii) the chase or tug-of-war sequence in which one character tries to take a product away from another.

This refers to the scene in which one character shows he wants the product by trying to get it, usually but not

1) Dr. W. Wells "Communicating with Children", Journal of Advertising Research No. 2 (1965).
Helitzer and Heyel, "The Youth Market, its dimensions, influence and opportunities for you" (1970).

always from another character. As with the "magic power" commercials, the motivation seems to be on a fantasy level. Even though children know perfectly well the commercial characters are not real, seeing the characters strive for something produces a powerful inference that something must be worth having ;

iii) the use of music, singing and dancing.

Children will often pick up a catchy rhythmical tune which is easily remembered and repeat it at school or play thereby disseminating the advertising message ;

iv) the use of personalities or heroes to entice children.

An increasingly common technique is to use a personality, comic-book or cartoon character to attract attention to a product and endorse its qualities.

v) the voice of authority.

Helitzer and Heyel suggest that the adult male voice is far superior in reaching the child, e.g. "wait till your father gets home, he'll talk to you about that". "Tests conducted with children have indicated preference for and response to the adult male voice" (1) ;

vi) the voices of children agreeing with the announcer.

This technique is regarded as most effective where the voices are recorded off camera so that they can be taken as those of other viewers rather than of participants in the commercial ;

vii) depiction of children out-performing adults.

The usual representation under this category is where an adult tries to do something and fails but the child succeeds. A typical example is where the strong man cannot lift the weights but after a mouthful of a product, the young child lifts them without any trouble at all ;

viii) animation.

Like the use of super-heroes, animation in advertisements attracts children's interest although it may make it more difficult for them to distinguish between ordinary cartoon programmes and advertisements ;

ix) peer group acceptance.

Techniques which make subtle allusions to social status, for example commercials which show children of the target group's age using or being successful with the product may be associated with social status or peer group acceptance appeals ;

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1) Helitzer and Heyel at p. 179-180.

x) selling by characters who also appear in programmes.

Where characters who appear in programmes are used for advertising purposes in close conjunction with programmes where they also appear, there is again the distinct possibility of confusion between the two, especially for younger children.

Similar techniques are used in other media. The important point about the use of these techniques is that they fail to provide useful information about the qualities of the products they advertise. Only infrequently is information given on price, size, materials, durability, etc. which is useful information for parents in assessing the relative merits of products directed at children.

II. MAJOR AREAS OF CONCERN

Two important studies have recently been completed highlighting the differing views on the extent and nature of concern over advertising directed at children. In the United States, the Federal Trade Commission Staff Report on Television advertising to children published in February 1978 recommended that the Federal Trade Commission commence rule-making under the applicable provisions of the Magnuson Moss Federal Trade Commission Improvements Act to eliminate harm arising out of television advertising to children. The report is now under public hearing.

In France, under the presidency of Mme Scrivener, former Secretary of State for Consumer Affairs, a report was prepared for the Minister for the Economy in June 1979 entitled "The role and responsibility of advertising to the public" (1). The report dealt in part with the problem of advertising directed at children. It considered two basic questions :

- is the child particularly vulnerable to advertising in the role of purchaser or demander of goods ?
- in a more general way, is the child threatened in his psychological or cultural development, even in his health by the phenomenon of advertising ?

The report noted that on these two points, a gap exists between the analysis of the specialists and the feelings of a large section of public opinion. For the specialists, advertising as it exists now and with its present volume does not represent a serious threat to children. For public opinion on the other hand, the exposure of children to advertising, and the influence that it has on them, poses serious problems. This apparent separation of opinion can be seen as an expression of a refusal by parents to see advertising intrude into family affairs affecting perceptibly the sometimes difficult relationship with their children.

Most of the studies on this subject agree that the most important area of concern is the effect of advertising on the parent/child relationship. However, they differ on the extent to which advertising

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1) Rôle et responsabilité de la publicité à l'égard du public, Paris, 1979.

directed to children has an impact in this and other areas. For the purpose of this report, the subjects of concern have been divided as follows :

A. The children's lack of understanding.
B. The parent/child relationship.
C. The psychological and cultural impact on children.
D. Safety, health and nutrition.

A. CHILDREN'S LACK OF UNDERSTANDING

The Federal Trade Commission in its report noted studies that the pre-school child has limited capacity for reasoning (1). Although he speaks, he frequently does not understand what he is saying. He is unable to put himself in the place of another person to see that his viewpoint is only one of many possible points of view, his thinking focuses only on one feature at a time, "Impressionistically and sporadically on this or that momentary condition (2)".

One study noted that television appears "real" to young children, who may believe for a time that there are "real little people" inside the box (3). Children who have progressed beyond that early illusion may think that a person speaking from the television is addressing them personally (4). Further, small children perceive even the animated fantasy characters (elves, wizards, etc.) in commercials as being (a) in some sense real, and (b) in some sense adult, so that they are to be listened to, learned from and imitated, just as any adult is (5). It is also suggested that small children have difficulty distinguishing between the fantasy and the realistic elements of commercials as well as between the advertisements and the products which they promote (6).

The FTC noted that these cognitive and perceptual limitations have led the Programme and Committee Staff of the New York State Assembly to question seriously the propriety of advertising at all to pre-school or even older children.

The Programme and Committee Staff stated :

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1) Reese and Lipsett, "Experimental Child Psychology" (1970), at p. 479-499.
Mussen, Kongen and Kagan, "Child Development and Personality", (1969) at p. 305.
2) Flavel, J.M., The Developmental Psychology of Jean Piaget (1963) at p. 157.
3) Schramm, Lyle and Parker "Television in the Lives of our Children", quoted in Blatt, Spencer and Ward, A Cognitive Developmental Study of Children's Reactions to Television Advertising (Working Paper, Marketing Science Institute, Cambridge, Mass. 1971) at p. 2.
4) O'Bryan, Kenneth, Presentation before the Federal Trade Commission, 1st December, 1977.
5) Id.
6) Blatt, Spencer and Ward, supra note at p. 21.

"We have very serious concerns about the appropriateness of directing any advertising to children, 2-11 years old. We are particularly concerned about the directing of advertising to the very young child 2-5 or 6 years old. It is difficult to understand how a child of that age can be considered a discriminating judge of products presented to him in any context, let alone the non-informational context within which advertising is presented. The argument of many advertisers, advertising agencies and broadcasters that such advertising really helps to prepare the child for his future role as a consumer, seems like, at best, grasping at straws" (1).

In France, the Scrivener report claimed that the idea that the child is credulous with respect to advertising only reflects a projection of adult criteria on children. It suggested that studies show a maturity among children in their attitude towards advertising messages. The child concerned by these messages i.e. 8-10 years old acts like a "wise consumer" rather than an immature one. He attaches great importance to examining the product in the shop and the verification of advertising claims on the premises. He searches systematically for complementary information from his friends and puts together with them, more than adults, his positive and negative experience associated with the use of products. False or misleading advertising leaves an indelible mark on him and destroys completely his faith in the product. The influence that the child exercises on family purchases is rather the influence of a censor than the influence of a persuader.

For children less than 8-10 years old, the advertising message seems to be perceived like a story. The young child is aware of the interest of this story, its form, its rhythm and very little of its commercial intent. The fact that he knows by heart certain advertising "jingles" does not seem to be a sign of persuasion in the commercial sense of the term, but shows simply that the story has pleased him.

The FTC noted studies that suggest that many children aged eight and younger are unable to distinguish between television programmes and commercials. The pilot study undertaken by Blatt, Spencer and Ward, referred to above, exposed 20 children ranging in age from 5-12 years to video-tapes of typical Saturday and Sunday morning commercials. The children were interviewed the next day about what they had seen. The younger children, (those in kindergarten) focused basically on coincidental differences between commercials and programmes ("commercials are more funny"). Subsequent studies were undertaken by Ward, Reale

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1) Kids, Food and Television, (March, 1977) at p. 86.

and Levinson in 1971 (1), and by Ward and Wackman in 1973 (2). In each study, personal in-house interviews were undertaken in a sample of 67 children, ranging in ages from 5 to 12 years. Children were asked directly, "what is the difference between a TV programme and a TV commercial ?". Children between the ages of 9 and 12 readily distinguished between the two (e.g. that "programmes are supposed to entertain", while "commercials try to sell things"). Children between the ages of 5 and 8 tended to focus on superficial differences (e.g. that "commercials are short and programmes are long").

The inability of many children to differentiate between television programmes and commercials suggests that they do not understand that the purpose of the commercial is to create product demand. In the Ward and Wackman study referred to above, children in the 5-12 years group showed low levels of understanding of the selling intent of the commercial.

The FTC quotes three studies that it believes demonstrate that young children who do not understand the persuasive intent of commercials are more likely to perceive them as truthful messages than older children who do understand that intent (3).

A study performed by Ward, Reale and Levinson in 1972 demonstrates that younger children who did not understand the persuasive purpose of commercials showed more willingness to believe them than did older children who tended to regard them with more scepticism. Similarly, Robertson and Rossiter found that awareness of the persuasive purpose of commercials is directly related to age and that younger children showed more trusting attitudes than older children.

Further research has been carried out in the United Kingdom at the Centre for Television Research, University of Leeds. Here seven women were questioned to identify the major areas of concern and then a quantitative survey of 1,228 mothers of young children was carried out by the British Market Research Bureau (BMRB). The survey investigated mothers' views on the credulity of children. Mothers expressed the view that children literally interpreted statements that might not be literally true and agreed that credulity was more a problem with children under the age of seven. 44 per cent of mothers felt that a child aged four to seven cannot tell fact from fantasy in commercials.

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1) Ward, Reale and Levinson, Children's Perceptions, Explanation, and Judgments of Television Advertising : A Further Exploration (Working paper, Marketing Science Institute, Cambridge, Mass., 1971).
2) Ward and Wackman, Effects of Television Advertising on Consumer Socialisation (Marketing Science Institute, Cambridge, Mass., 1973).
3) Robertson and Rossiter, Children and Commercial Persuasion, An Attribution Theory Analysis, Journal of Consumer Research, June 1974 at p. 13-20. Ward, Reale and Levinson supra note, and Ward and Wackman supra note.

B. THE PARENT/CHILD RELATIONSHIP

In France, the Scrivener report noted that according to a recent study, 43 per cent of family purchases are influenced by children, including purchases of children's products and those used by the family. The report looked in general terms at the impact of advertising on parent/child relationships and considered that this was the major problem in advertising directed at children. It considered that in this area, as in others touching public sensitivities, limits should be accepted with the sanction of rejection of the advertising. Such limits are already established for the use of children in advertising which have been defined progressively by the Régie Française de Publicité. The Commission criticises the excessive formality and detail of this code and suggests a return to good sense in applying the following principles :

- advertising should not appeal to the sense of duty of parents ;
- it should not make them feel guilty ;
- it should avoid an excessive reliance on the feelings aroused by the presence of young children ;
- it should not seek to transfer to products, the love which unites parents and their children.

In this way a strict examination, message by message, would be more effective than the elaboration of formal rules which soon become out of date.

In the United States, the profitability of advertising to children has been explained by the success of children as naggers. The FTC quotes Helitzer and Heyel (1).

"Children can be very successful naggers. By and large parents quite readily purchase products urged upon them by their youngsters. In Helitzer Advertising's research, it was found that a parent will pay 25 per cent more for an advertised product with child appeal even when a less expensive, non-advertised product is no different".

One study undertaken by Dr. Charles Atkin of Michigan State University observed parent-child interactions in selecting cereals in supermarkets. He found that in two-thirds of the 516 families observed, children initiated the selection, either by demanding (46 per cent), or requesting (20 per cent) a specific brand (2).

In another study (3) a sample of 1,053 children were interviewed in houses ; 591 of the mothers completed questionnaires. For the 20

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1) Helitzer and Heyel at p. 32.
2) Atkin, Effect of Television Advertising on Children - Parent - Child Communication in Supermarket Breakfast Cereal Selection, Report No. 7. Michigan State University (June 1976).
3) Gene Reilly Group, Inc. Meals and Snacking : The Child and What He Eats, The Child, Volume 2, December 1973.

product categories examined, at least 75 per cent of the mothers who purchased these products acknowledged that they were influenced by their children's requests. Other research, for example Ward and Wackman (1) reports acquiescence 85 per cent of the time for cereals, 63 per cent for snack foods, and 42 per cent for candy, based on reports by middle-class mothers. An American Broadcasting Company study shows that 65 per cent of all mothers take their small children with them to the supermarket, and that 34 per cent take them along every time they shop for food. Over half the mothers said that their children actually select items to be bought (2).

The FTC quotes several studies which have measured pre-school children's attempts to influence purchases while accompanying their mothers at the supermarket. A study by Galst and White (3) shows that the number of requests they made was positively related to the amount of television they watched. Cereals and candy were the most requested items. Another study undertaken by Atkin (4) shows a positive relationship between children's exposure to television advertising for cereal and candy and their consumption of those products.

There has also been some preliminary research in Europe. The following table sets out the response of Swiss-German children to the question of whether they had asked their parents to purchase a product advertised on television :

	3-6 years	7-10 years	11-12 years
Several times	44%	36%	26%
Rarely	30%	40%	43%
Once	24%	18%	29%

A further enquiry in Switzerland in 1979 of a review of television programmes concluded that two-thirds of children sampled wanted occasionally or often to obtain the goods offered in television advertising. The majority of parents gave in to these demands from time to time while 20 per cent gave in to the demands often.

The survey conducted at the University of Leeds showed that 57 per cent of the 1,228 mothers interviewed agreed with the suggestion that television advertisements made children nag their parents for

1) Ward and Wackman, Children's Purchase Influence Attempts and Parental Yielding, 9 Journal of Marketing Research at p. 316-319 (1978).
2) Helitzer and Heyel at p. 18.
3) Galst and White, The Unhealthy Persuader : The Reinforcing Value of Television on Children Purchase Influencing Attempts at the Supermarket (Working paper, Department of Psychology of Schooling, Teachers College, Columbia University, April 1976).
4) Atkin, The Effects of Television Advertising on Children, A Survey of Pre-Adolescent's Response to Television Commercials, Report No.6, Michigan State University (June 1975).

things ; several of the housewives criticised advertisements for rarely showing the price of goods that might have assisted them in saying "no" to children's requests.

A further effect of advertising which indirectly places pressure on parents has been noted in the United States. Parent-child conflicts may ensue as a consequence of parental refusal of a child's purchase requests. A former president of the American Academy of Child Psychiatry has stated that, "The American Academy of Child Psychiatry, as an organisation primarily devoted to the mental health needs of all children is deeply concerned with the exploitation of children, by many advertisers on the television media. Many of these advertisements are directed to the attention of children in order to bring pressure to bear upon the parents to purchase these products ... Furthermore, the advertisements encourage confrontation and alienation on the part of children toward their parents and undermine the parents' child-rearing responsibilities".

C. THE PSYCHOLOGICAL AND CULTURAL IMPACT ON CHILDREN

In France, the Scrivener report looked at a number of psychological and cultural aspects of the impact of advertising on children. The report considered that the question of whether television advertising numbed the critical sense of children was a question that ranged beyond advertising to the impact of television itself on children. The basic question is whether television is a conditioning factor or contributes to the development of personality. It concluded that this is a difficult, controversial question outside the consideration of the Scrivener Commission and therefore was not examined in detail.

The report examined the question of advertising creating frustrations by persuading people to want many objects which cannot be obtained. These frustrations apply equally to children and adults and the question is whether the frustrations are particularly strong or damaging in children. Studies on this subject are rare but tend to show that the frustrations of the children depend largely on their relations with their parents. The principal cause of these frustrations would be the fact that the parents do not succeed in explaining their refusal to purchase to their children, and sometimes feel themselves frustrated by the advertising. The real frustrations arise from the fact that their friends have something that they do not, far more than the refusal of their parents to buy a product which has been the subject of publicity.

The report considered the question of the presentation in advertising of an idyllic view of the world in contrast to reality. This idyllic view gives a distorted image of happiness based on the possession and consumption of goods and sometimes reinforced out-of-date stereotypes

such as women confined to the role of housewives. It concluded that there was a need for better standards in this area.

In the United Kingdom one of the areas criticised in the University of Leeds survey was the excessive "niceness" of some children in the commercials. Another area of concern was the depiction of the tolerant mother who does not complain when her little boy returns with a muddy T-shirt after being sent out clean. These depictions of unreal life styles have also received criticism in other countries. For example, in Australia, it has been noted that such advertising depicts women and girls in "subordinate roles or domestic situations ; preoccupied in capturing a male partner ; obsessed with the whiteness of her husband's shirt or household cleanliness ; or arguing the merits of household detergents. Males were often depicted as superior and successful middle class businessmen being pandered to by a devoted spouse" (1). It was concluded there is concern that young children, particularly in their formative years absorbed much of these value systems, attitudes and role modelling depicted in advertisements. Similar concern is expressed in a recent study by the Working Group on Communication Research in Germany (2). The study found that television advertising to children uses typically middle or upper class stereotyped patterns of behaviour. In Norway research is examining the link between advertising and criminality.

D. SAFETY, HEALTH AND NUTRITION

The FTC also drew attention to the effects of this advertising on children's food consumption and, in particular, consumption of sugar. It is suggested that this is connected with a significant shift in American eating habits to "snacking and nibbling" instead of eating at meals. Children, especially those in cities are able to purchase snack foods in supermarkets,fast-food restaurants, and even in schools. A survey in one store in a large Eastern city in the United States showed that 12 per cent of customers were under 12. Another survey showed that low-cost items on which children spend most of their money are purchased alone or with a friend - not parents. The same survey showed that the children studied (aged 8-12) spent about half of their allowance on snacks - 72 per cent of which were sugared. These snacks were purchased repeatedly and sometimes substituted for meals (3).

The FTC noted that all these factors combined together with the enormous quantity of television advertising for such products have

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1) Children and Television at p. 130.
2) Study by the Arbeitsgemeinschaft für Kommunikationsforchung e.v., quoted from ZAW-basisdienst 6/79 at p. 3-4.
3) Kids, Food and Television, at p. 37.

alarmed a number of experts in public health and nutrition who fear that televised food advertising undermines nutrition education. The United States Senate Select Committee on Nutrition and Human Needs states : "In a world of human beings, progress is bound to be slow, but instruction in sound food choices and eating habits is at present hardly more than episodic, while persuasive commercial forces work unremittingly to encourage unwise eating habits and to nullify sound education. Some of these forces promote diet supplements, but most promote over-sugared, over-salted snack foods that distort diets" (1).

The Council on Food and Nutrition of the American Medical Association expressed similar sentiments in 1974 in a submission to the FTC entitled "Television Advertising to Children". "The nature of the advertising and the emphasis on food items of high caloric density (mainly from sugar) that characterise the commercial promotion on children's television programming is most distressing. There clearly is need for more responsible advertising that helps to keep the concepts of good health and good nutrition. At the present time, advertising to children is counterproductive to the encouragement of sound habits".

The FTC staff report concluded that particular attention should be paid to advertising directed to children for sugared products. The report cites evidence of the link between consumption of such products and the high incidence of tooth decay and the contribution of sugar consumption to obesity, heart disease and diabetes. It was on the basis of this evidence that FTC staff recommended that televised advertising directed to, or seen by, audiences composed of a significant proportion of older children (8-11 years) for sugared products, the consumption of which poses the most serious dental health risks should be banned. In addition, all other televised advertising for sugared products should be balanced by nutritional and/or health disclosures funded by advertisers.

This proposal has been strongly criticised by the advertising industry in the United States who assert that the bulk of children's television exposure occurs during adult or family viewing periods and, therefore, restrictions on television advertising seen by children are essentially restrictions on all advertising. They suggest that the proposed ban on advertising of high-in-sugar products which might be seen by older children would mean that even in family viewing hours, there would be no commercials for soft drinks, canned fruit, or orange juice. They conclude that "advertising directed to children, far from being an insidious, corrosive force preying on young innocents is, in fact, a productive and constructive enterprise which is of genuine

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1) Senate Select Committee on Nutrition and Human Needs. National Nutrition Policy Study, Report and Recommendation (1974).

benefit to children themselves, their families, and society at large. It provides a steady flow of consumer products, forces consumer prices downward, generates vital competition, and respects the special needs of growing children. Its costs are more than justified by the values it generates" (1).

In France, the Scrivener report noted the strict rules that exist concerning the depiction of dangerous situations in television advertising. The Commission considered that this is necessary but there is too much concentration on formal rules (e.g. the prohibition of a child climbing on a table). It believes that good sense rather than rules should guide the consideration of dangerous situations in which children appear. On the other hand it suggested that progress should be made on identifying products capable of presenting a danger to children, particularly the young. The number of accidents, caused for example by certain household products merits concern right from the stage of the advertising message.

The report also examined consumption habits and the question of whether it is better to limit or regulate the advertising of products, the normal consumption of which presents no problems but excessive consumption can be dangerous. That is the case with the consumption of sugar and fats. A warning statement could be envisaged (of the type "avoid excessive consumption") but it would be advisable above all to prepare information broadcasts on the problems of food and nutrition.

Concern over health and nutrition advertising has also been expressed in other Member countries. For example, in Australia, a study showed that much of the advertising directed at children between 4 p.m. and 6 p.m. on a commercial television station appeared to concentrate on the message "eat fast - eat sweet". The percentage of advertising time devoted to fast foods, biscuits, sweets and drinks between 4 p.m. and 6 p.m. was 44 per cent compared with only 6 per cent devoted to this group between 6 p.m. and 7 p.m. It was considered that if children are subject to this dietary persuasion in the immediate pre-dinner period, it presents problems for those parents who are attempting to encourage their children in nutritious eating habits. A Brisbane pediatrician stated that he had experienced problems in trying to motivate children inclined to obesity toward calorie-restricted diets because the children had difficulty in resisting persuasive television advertisements for food and sweets in the pre-dinner period (2).

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1) The Positive Case for Marketing Children's Products to Children, Comments by Association of National Advertisers Inc., American Association of Advertising Agencies, Inc., American Advertising Federation on the FTC's Children's Advertising Proposed Trade Regulation Rule.
2) Children and Television at p. 132.

III. MANDATORY AND VOLUNTARY REGULATION OF ADVERTISING DIRECTED TO CHILDREN IN MEMBER COUNTRIES

All Member countries have general regulations prohibiting unfair or deceptive advertising and it is recognised that standards of what is considered as unfair or deceptive should be higher in advertising directed at children. In Australia, Canada, Finland, Germany, the Netherlands, the United Kingdom and the United States, in addition to these general regulations voluntary codes of advertising exist for television and radio and the effectiveness of these is monitored in the context of controls maintained on the broadcasting media. Examples of specific regulations follow.

A. ADVERTISING REGULATIONS

In Sweden, a number of principles have been established by the National Board for Consumer Policies and the Consumer Ombudsman in the context of enforcement of the Marketing Practices Act for consideration in advertising directed at children :

- the advertisement must not exploit the credulity of children nor the adolescent's lack of experience ;
- the advertisement must not incorporate any presentation, verbal or visual, which could imply that using the product involves the risk of physical injury or which could have a detrimental effect on children either mentally or morally ;
- visual advertising in which children appear must not incorporate scenes depicting situations of risk, in which normal safety precautions have been cast aside and which could, therefore, be taken as promoting carelessness in this respect ;
- marketing for children and adolescents must not incite them to break applicable laws and regulations ;
- children and adolescents should not be subjected to heavy advertising pressure to buy products.

Several hundred cases which in some way or other involve advertising aimed at children or products used by children have been dealt with by the Board for Consumer Policies to date. Some examples of cases where action has been taken may serve to illustrate what has developed as practice.

At the request of the Consumer Ombudsman, the Market Court has banned the use of human models and alluring settings in cigarette advertising. One of the reasons behind the ban is that visual presentation of this type is considered to have a strongly suggestive influence, especially on adolescents, in the direction of smoking. After a number of complaints to the Consumer Ombudsman - especially from young people - the Market Court has banned certain types of advertising for a body-building device. The form of the advertisement was deemed improper from the point of view that it exploited feelings of inadequacy and inferiority with the object of selling. An advertising offer to 14-year olds of a demonstration and a trial run-out of a moped has been banned since it was thought it would create a risk that young people would be lured into violating moped by-laws.

Products which are considered dangerous for young children but which can be used by older children are not marketed or sold to young children by agreement between the Board of Consumer Policies and the firms involved. Examples of these are skateboards, hobby glue and chemistry sets. It is not uncommon that children themselves complain to the Board for Consumer Policies that they feel they have been fooled by advertising. Many children have complained that the pictures on the boxes of model-building kits give a misleading idea of the appearance of the finished model. This has given rise to negotiations between the Board for Consumer Policies and the toy trade on the subject of marketing of building kits.

Other countries have taken specific legislative action on advertising directed at children particularly of products such as tobacco and alcohol. In Spain for example, a Royal Decree published in the Official Bulletin of 25th May, 1978, prohibits advertising of tobacco and alcohol to audiences principally composed of young people. Arguments directed at children cannot be used in the preparation of such advertising and the use of young persons less than 18 years old in such advertising is prohibited.

In Switzerland, certain measures have been taken relating to tobacco and alcohol. The ordinance relating to foodstuffs prohibits for tobacco articles any claim which incites young people to use tobacco. In particular advertising is prohibited :

a) in places used by young people ;
b) on advertising material directed to children ;
c) on sports clothes and other sporting goods ;
d) in the form of free offers to children.

Similar advertising restrictions apply to alcoholic drinks and chocolates containing alcohol which must be marked "not to be sold to children".

B. CODES OF ADVERTISING PRACTICE

Most Member countries have voluntary codes which are applied by advertisers in the various media. Some of these codes have statutory backing. The code which has the most widespread use is the International Code of Advertising Practice prepared by the International Chamber of Commerce. This Code forms the basis of voluntary controls in most Member countries and is often cited in court cases involving consideration of advertising standards. In Germany, for example, the rules of conduct for advertising to children on commercial radio and television issued by the German Advertising Standards Authority make particular reference to article 13 of the ICC Code. Similar use of ICC Code is also made in Austria. At Article 13 the Code states :

"1. Advertisements should not exploit the natural credulity of children or the lack of experience of young people and should not strain their sense of loyalty.
2. Advertisements addressed to or likely to influence children or young people should not contain any statement or visual presentation which might result in harming them mentally, morally or physically."

In Belgium, for example, this code is applied by the Jury on Ethical Advertising, a self regulatory body established by the advertising industry. In the event of complaints, the Jury considers the case and makes recommendations to the interested parties. Where these are not followed then legal action can be undertaken by the Administrative Board of the Advertising Council. Since its establishment in October 1974, the Jury has considered approximately 500 cases. For example, the Jury took the initiative to ensure modification of advertising for cigarettes which constituted a direct appeal to young people.

As an example of the application of voluntary codes within the context of controls on the broadcasting media, in Canada, the Canadian Association of Broadcasters has prepared a code, "the Broadcasting Code for Advertising to Children", which is adhered to by the major broadcasting and advertising organisations. The code is endorsed by the Canadian Radio-Television and Telecommunications Commission (CRTC) and all Canadian television and radio stations must adhere to the Code as a condition of their broadcasting licences granted by, and subject to renewal from, the CRTC. All broadcast advertising directed to children, except that which is purely local, must receive prior authorisation from the Children's Section of the Advertising Standards Council. Broadcasting stations must not accept advertising directed to children which does not have a Council authorisation number.

The public radio and television network, the Canadian Broadcasting Corporation, limits its advertising directed to children to four minutes per hour in and adjacent to programmes designated by the CBC

as having an overall family/adult audience appeal. The CBC does not accept advertising of any kind in or adjacent to programmes designated by the CBC as directed to children under 13 years of age.

In Finland, in planning a television commercial, the fact that children comprise a large part of the viewing audience must be taken into account. As time limits for presenting commercials are not usually set, both the content and the manner of presentation of commercials must not, by their example, have a detrimental effect on children.

Special care must be taken that :

a) commercials do not present situations which, if imitated by a child, might cause injury ;
b) toys or sweet commercials do not contain an appeal in words directed at children and insinuating that they should try or buy the product advertised ;
c) if an advertisement involves a contest, or a gift forms part of the product to be advertised, the emphasis must be laid on the product itself, and the advertisement must not give a misleading impression of the prizes of the contest, of the chances to win the prizes or of the size or the value of the gift ;
d) when advertising products designed for children e.g. toys, manners of presentation or effects that might give a misleading impression of the product to be advertised or of its use, must not be employed. For instance, the use of authentic car noise in a commercial advertising a toy car is forbidden. In several cases it might be advisable to send the toy in question for inspection so that those responsible for the advertisement could ascertain that the impression the commercial conveys is truthful ;
e) if a product designed for children is one that can be assembled, painted or moulded, the result presented in the commercial must be such as can be fairly easily achieved by a child. However, anything exaggerating the ease with which the result is achievable, should be avoided in the advertisement ;
f) when prices are announced in commercials advertising products designed for children, no unfounded expressions such as "only", "not more than" or other similar expressions shall be employed in this connection.

According to the basic agreement between the Finnish Broadcasting Company (YLE) and Mainos TV (MTV), the unnecessary use of children in commercials should be avoided. However, if the nature of the product requires the appearance of a child or of children, the script and the grounds for the use of the child must always be provided for approval by MTV.

The use of a child in advertising as the main performer is permitted when products or services linked directly with child care or health education are involved (children's health care products and supplies, baby food, children's clothes, toothpaste and brushes, educational literature, toys and sporting goods meant for children). In these cases, too, the use of a child or children as the sole performers should be avoided. In no connection may a child advertise an individual product in words. Children may not appear at all in sweet commercials.

In Germany, the German Advertising Standards Authority has drawn up the following Rules of Conduct for advertising with and to children on commercial radio and television :

"In advertising with children and in advertising that is addressed specifically to children, the following principles in particular shall be observed in the design and realising of advertising measures :

1. They should contain no statements by children about the special advantages and features of the product that do not conform to the natural utterances of the child.
2. They should contain no direct requests for purchase or consumption addressed to children.
3. They should contain no direct requests by and/or to children to induce others to buy a product.
4. They should not exploit or abuse the special trust which children usually place in certain persons.
5. Aleatory advertising media (e.g. free raffles, prize competitions and puzzles etc.) should not mislead the potential purchaser, should not allure by the offer of excessive advantages, should not exploit gambling instincts and should not indulge in touting.
6. They should not present penal offences or other misconduct by which persons may be endangered or allow same to be published as worthy of imitation or approval."

In Japan, the standards of broadcasting by the Japanese Civil Broadcast Union provide voluntary guidelines and are based on the ICC Code. The guidelines state :

> "The advertisement should not stir up the gambling spirit nor urge emotions for purchase. For example, advertisements which excessively stir up children's gambling spirit by premium offers or representations in advertisements such as 'if a child does not have its toy, he will feel left out by his friends', should be avoided in the commercial."

The Guideline for Improvement of Advertisements by the Japanese Chamber of Commerce and Industry provides that advertisements should not ignore the public moral feeling, not be contrary to social customs,

nor be vulgar to children. In addition, the Agreement on Self-regulation on the Advertisement of Medicaments for general use by the Japanese Medicament Manufacturers Association Union provides that the advertisement of medicaments in programmes directed to children should very carefully be dealt with as to presentation.

In the Netherlands, government concern with the supervision of advertising directed at children is confined to broadcast advertisements. An Advertising Board was established in 1965 by virtue of the Broadcasting Act. The Board lays down rules as to the content of radio and television commercials and the supervision of the implementation of these rules. It also deals with complaints about broadcast advertisements. One of the rules applying to commercials in the Netherlands relates to advertising directed at children. The rule states :

> "Advertising obviously aimed at children, whether wholly or in part, must not contain or suggest anything either in word or image which may infringe upon the authority of parents or other educators. Neither may such advertising seek to derive advantage from the ignorance or the natural gullibility of children. Especially in commercials in which children play a part, one should avoid depicting or describing acts which responsible parents will not knowingly and willingly allow their own children to do in view of possible physical or moral risks involved in such acts."

The Advertising Board has charged the Broadcasting Advertising Foundation (Stichting Etherreclame - STER) with the supervision of the implementation of the rules. Anyone who feels that a commercial passed by STER for broadcasting fails to comply with the rules, may lodge a complaint with the Advertising Board. If a complaint is found to be warranted, the ensuing decision will state within what time-limit broadcasting of the commercial in question must be discontinued. The Advertising Board may also, ex officio, institute an enquiry to determine whether any commercial passed by STER complies with the rules.

In 1964 a group of organisations active in the advertising field prepared rules of conduct embodied in a Netherlands Advertising Code. The group included the Union of Advertisers, Nederlandse Dagbladpers (a newspaper publishing concern), the Netherlands Organisation of Periodical Publishers and the Netherlands Association of Approved Advertising Consultants. Two consumer organisations, Consumentenbond and Konsumenten Kontakt, have joined the group later. These organisations have set up a Code Committee to judge advertisements as to compliance with the Netherlands Advertising Code. Article 11 of the Code says that advertisements obviously aimed at children, whether wholly or in part, must not contain anything either in word or image which may harm children in any way, or may derive advantage from their ignorance or natural gullibility. Anyone who considers an advertisement

to be contrary to the rules of the Code, may apply for a "recommendation". This is a communication to the sponsor advising him to desist from such advertisements. The Committee may decide to publish its recommendations. Parties may appeal against decisions of the Code Committee to a Board of Appeals.

In Switzerland, the advertising profession has established a voluntary self-regulatory commission so that advertising complies with the advertising code established by the International Chamber of Commerce. Where a complaint is made and the advertising contravenes the Code, the Commission ensures that the conduct is remedied. The Commission, therefore also arranges that advertising towards children complies with article 13 of the ICC Code. The Commission has issued various directives on issues such as tobacco and alcohol advertising to children which are considered complementary to legislation and the ICC Code. The Swiss Association of Cigarette Manufacturers also has its own advertising code. In addition, several publications addressed to children voluntarily refuse to accept certain advertisements for ethical reasons.

In Turkey, clearly defined principles exist for advertising directed at children on television :

- in promoting products directed at children, children can only appear in the company of a member of their family. Children cannot be used as publicity objects. The conduct of children on television must conform to proper educational standards ;
- advertising which encourages children to collect coupons, labels or capsules or showing them entering unsuitable places or talking to persons they do not know, cannot be accepted ;
- advertising showing small children climbing on furniture, shelves or trying to reach up to high tables, leaning over bridge parapets, climbing in dangerous situations cannot be accepted ;
- advertising featuring children playing with or using drugs, detergents, pesticides, matches, petrol or other dangerous products, cannot be shown on television ;
- promotion of beer and alcoholic drinks can only be made on television by adults.

In the United Kingdom, a major element in the control of printed advertising is the Code of Advertising Practice drawn up by organisations representing advertisers, advertising agencies and media, and voluntarily accepted in every field of professional advertising practice since 1962. Printed advertising embraces in the main newspapers and magazines - including children's comics - as well as cinema commercials and posters. The Code requires that all advertising should be legal, decent, honest and truthful and it is administered by the independent Advertising Standards Authority through sanctions applied

by the media who withhold advertising space from offending advertisers or withdraw trading privileges from advertising agencies, and by publicity given to the outcome of investigations. The ASA is an independent body set up and paid for by the advertising industry to ensure that its system of self-regulation works in the public interest.

So far as advertising directed at children is concerned it is a general rule of the Authority that advertisements addressed to children or young people, or likely to be seen by them, should not contain anything, whether in illustration or otherwise, which might result in their physical, mental or moral harm, or which exploits their credulity, their lack of experience, or their sense of loyalty. These rules form the basis for adjudication whenever there may be conflicting views about the acceptability of an advertisement, whether it is challenged from within or from outside the advertising business. Guidelines are also issued by the Authority to amplify these rules. The Authority also monitors and will continue to monitor compliance with the Code's rules in regard to children. It is their distinct impression that it is extremely rare that any advertising directed at children in the printed media fails to conform to the Code.

In the case of television advertising the Independent Broadcasting Act 1973 places a statutory duty on the Independent Broadcasting Authority to draw up and from time to time review a Code governing standards and practices in advertising and prescribing the advertisements and methods of advertising to be prohibited in particular circumstances ; and to secure compliance with the Code. Among its objects the Code aims to exclude from advertisements in association with children's programmes, or which a large number of children are likely to see, anything that might result in harm to them physically, mentally or which would take advantage of their natural credulity or sense of loyalty.

C. RECENT PROPOSALS UNDER CONSIDERATION

In some countries consideration is currently being given to further regulatory controls on advertising directed at children. In the Province of Quebec, Canada, a bill has been introduced totally prohibiting advertising to children under the age of 13. In Australia, the Australian Broadcasting Tribunal recommended that no advertising be permitted in programmes for pre-school children and that there was a positive case for encouraging pro-social messages for mothers concerned with health, diet and safety. However, while this recommendation has not been pursued, a Children's Programme Committee has been established to monitor standards in children's television.

In the Nordic Council of Ministers, money has been appropriated for a project whose object will be to analyse advertising and marketing aimed at children and young people and to determine whether more

requirements should be made with a view to protecting this group, in addition to those already incorporated in current legislation in Scandinavia.

However, the most far reaching proposals currently under consideration are those of the United States Federal Trade Commission. In its Staff Report on Television Advertising to Children, some of the research which has been quoted from earlier, FTC staff recommended that the Commission should proceed to rule-making to determine whether it should :

a) ban all televised advertising for any product which is directed to, or seen by, audiences composed of a significant proportion of children who are too young to understand the selling purpose of, or otherwise comprehend or evaluate advertising ("young children" refers to children below the age of eight) ;
b) ban televised advertising directed to, or seen by, audiences composed of a significant proportion of older children (between 8 and 11 years old), for sugared products, the consumption of which poses the most serious dental health risks ;
c) require that televised advertising directed to, or seen by, audiences composed of a significant proportion of older children for sugared food products not included in paragraph (b), be balanced by nutritional and/or health disclosures funded by advertisers.

The FTC staff report should not be considered conclusive but was of sufficient impact to cause the Commission to issue a notice of a proposed rulemaking hearing for the purpose of determining whether or not television advertising directed to children is unfair or deceptive and if so to design appropriate remedies. The matter is now in the midst of public hearings which have not been completed.

In France, the Scrivener report on "The role and responsibility of advertising to the public" made the following recommendations :

- limit by voluntary means the use of child heroes in advertising messages to prevent them from increasing the credibility of products ; where voluntary means are insufficient, recourse should be made to regulatory measures ;
- remove from children's publications, poorly identified advertising and encourage children's publications to join the Bureau de Vérification de la Publicité ;
- make possible an indication of order of magnitude of price in advertising messages directed to children. For certain products, notably toys, make it obligatory ;
- develop educational activities based on an analysis of advertising messages and identification of techniques of persuasion ;
- introduce in advertising a warning statement identifying dangerous products ;

- modify the attitude taken by the rules of the Régie Française de la Publicité ; modify its formal character and concentrate more on the deeper problems posed by the relation between the child and advertising.

The Minister for the Economy intends to take the action necessary to put into practice the recommendations of the Scrivener report. With this objective in mind, measures have already been taken to eliminate poorly identified publicity, to prohibit the use of children's heroes in advertising messages, to identify dangerous products and to reorient the codes of the Régie Française de Publicité more towards fundamental problems.

CONCLUSIONS AND SUGGESTIONS FOR ACTION

A. CONCLUSIONS

There is concern in Member countries over the effects of advertising directed at children. This concern ranges from discussion of the role of commercial material in Nordic schools to the more widespread criticism of advertising directed at pre-school children. The response to this concern has varied from demands for stronger voluntary regulation to outright bans of television advertising during pre-school programmes. Proponents of stricter controls argue that advertising confuses children, inculcates materialistic attitudes and values and leads to family dissension and to disillusionment and cynicism in later life. They argue that such advertising is basically unfair and manipulative since children cannot always differentiate between advertising and other material and since they do not often have money to make independent purchases, such advertising puts unfair pressure on parents. Concern is also expressed about children being encouraged to purchase products which may have a detrimental effect on their nutrition and dental health.

Representatives of the advertising industry argue that it is essential for economic reasons to maintain the current levels of advertising directed at children. They argue that children need early exposure to advertising in order to learn to cope with the consumer society which is part of the real world in which they live. Children's requests of parents are a natural part of family life and quite independent of television advertising. They contend that young children are able to discriminate between television programmes and advertising, and that research to date is very inconclusive. They also argue that if action were taken against particular forms of advertising, e.g. television advertising during pre-school programmes, it would have little overall impact on the exposure of children to advertising.

Child psychologists, parents, government experts and advertisers may disagree on the extent to which advertising affects children. However, on the basis of current research and the material available for this survey, it would appear that there are some specific areas of concern which merit more detailed examination and action by Member countries. Accordingly, set out below are some suggestions for action for consideration by Member countries.

B. SUGGESTIONS FOR ACTION

Standards of advertising directed to children

Substantial concern has been expressed at the methods used to promote products to children exploiting vanity, acquisitiveness, maternal pride, fear, stereotypes of women and girls in subordinate roles, etc. Young people, particularly children, absorb much of their value systems from advertising and television programmes. Any advertising that urges young people to buy products on the basis of emotive criteria has little to do with inculcating sound values. It must be recognised, of course, that parents have an important role to play with respect to educating children towards a critical appreciation of advertising and in reacting to any undesirable effects. Voluntary and statutory efforts should be a positive support to parental influence.

By their mere nature the legal provisions existing in the advertising field cannot regulate in every detail the various advertising techniques and their abuses nor directly ensure the use of socially desirable advertising. Therefore the development of codes of practice is important in order to define in more precise detail social obligations of the business community in this area. Voluntary arrangements of this kind play an essential preventive and complementary role. In some countries such codes of practice serve as a very direct frame of reference for the application of legislation in this field.

Member countries should ensure that standards of advertising are prepared to incorporate the following three basic principles :

1. advertisers should not exploit the natural credulity of children when promoting consumer products ;
2. information in advertising directed at children should be communicated not only in a truthful and accurate manner but also with due regard to the effect of advertising on the safety, health and nutrition of children ;
3. advertising directed to children should be based on sound moral values and should not prejudice constructive parent/child relationships.

Advertising and the parent/child relationship

Advertising messages can encourage the child to place pressure on the parents to purchase goods and services. This can be considered an intrusion into family life and can create dissension and discord. Advertisers should not use techniques which deliberately encourage children to demand advertised goods from their parents. Standards should clearly state that such advertising is not permitted.

In some cases an indication of the order of magnitude of prices in advertising directed to children would give parents some basis upon

which to respond to the demands of children for advertised products. This will especially be the case for products such as toys. Member countries should against this background consider to what extent such price information should be given in advertising directed to children.

Advertising during children's television programmes

Where television advertising is allowed, care should be taken that programmes made especially for children should not be interrupted by advertising. Performers or characters from children's television programmes should not be used to endorse products in advertising programmes directed to children.

Sugared products advertising directed at children

Advertisements for these products can take advantage of the child's natural propensity to consume sweets. The media and/or the controlling authorities should therefore consider the development of strict and responsible controls on the content of these advertisements in order to promote an awareness of the hazards and to publicise suitable safeguards.

Safety of products advertised to children

Advertisers should give careful consideration to encouraging the safe use of consumer products. Advertising should not show children using such products in dangerous situations and should ensure that any possible hazards associated with the use of such products are pointed out to children and parents.

Evaluation of advertising in schools

The exposure of children to advertising directed to them at an early age renders more important the necessity for educating children to a critical evaluation of the values and benefits of advertising messages. School curricula should take into account the extensive exposure of children to advertising and encourage a healthy appreciation of the merits of such advertising through analysis of advertising messages and identification of techniques of persuasion.

Annex I

RESULTS OF A SURVEY ON ADVERTISING DIRECTED TO CHILDREN IN JAPAN

The survey conducted in March 1979 by one of the consumer associations on behalf of the Fair Trade Commission showed that most of the TV commercials for children's products such as sweets and snacks, food products and toys, etc. were broadcast between six and seven in the evening when many children are supposed to watch TV. In fact, there was an extreme case where a television station broadcast advertising directed at children as many as 67 times within one hour, total broadcasting time being 20 minutes and 15 seconds. Moreover, there were tendencies that

a) some advertising put an emphasis on premium sales rather than information on the goods themselves,
b) there were many commercial films without representation of prices, and
c) much use was made of well-known movie stars, singers and special characters from TV programmes to attract children's curiosity.

Consumers in general seemed to have opinions such as

a) too many commercials,
b) lack of educational content,
c) no or few indications of price or information on dental hazards.

Most presentations of sweets and snacks for children contained no ingredient analysis and many which recommended collection of premiums in series were possibly misleading ; there was also a great deal of excessive packaging. Further, tiny plastic toys which have a possibility to hurt infants were often used as a premium. Publishers tended to sell children's magazines using such words as "Big Sales", "Jumbo Sales", "Special Price" and "Big Bargain". In many magazines, it was rather difficult to determine their contents in spite of their special description.

The survey concluded that much advertising deceived children taking advantage of children's immaturity and insufficient judgement, in spite of the fact that advertisements directed to children should be made with more special consideration than for adults.

AVERAGE TIME SPENT WATCHING TELEVISION

(Survey : November, 1978)

Age Group	Weekday		Sunday	
	hrs.	mins.	hrs.	mins.
7-9 years old	2	44	3	7
10-12 years old	2	45	3	29
7-12 years old (male)	2	52	3	29
13-19 years old (male)	2	42	3	39
7-12 years old (female)	2	36	3	13
13-19 years old (female)	2	18	3	
7 and over	3	37	4	21

Source : National Audience Rating Survey
(Japan Broadcasting Corporation (NHK))

AVERAGE TIME SPENT LISTENING TO THE RADIO

(Survey : November, 1978)

Age Group	Weekday		Sunday	
	hrs.	mins.	hrs.	mins.
7-9 years old		5		6
10-12 years old		9		12
7-12 years old (male)		9		12
13-19 years old (male)		39		50
7-12 years old (female)		4		5
13-19 years old (female)		32	1	
7 and over		42		30

Source : National Audience Rating Survey
(Japan Broadcasting Corporation (NHK))

Annex II

RESULTS OF A RECENT STUDY IN SWEDEN ON TOY PACKAGING

Due to the many complaints received from children who felt that they have been deceived by pictures on the outside of boxes containing toys and playthings, Sweden's National Board for Consumer Policies engaged a psychologist in 1979 to make an experimental study of how children comprehend the pictorial information on toy packaging. Sixty-eight children, ranging in age from 9 to 12 years, were first shown ten packages and asked to say whether they wanted to buy the various toys which the packages contained. They were then shown the toys themselves and asked to say whether they were still interested. The results, although not generally applicable in a statistical sense, do seem to provide strong indications as to tendencies. The investigation shows that different children do not comprehend the pictures in the same way. Most often they believe that the picture on the package depicts the actual appearance of the plaything inside. The children believe the toy to be of the same size as the picture on the box. They also believe that all components and accessories shown in the picture are contained in the box. If an item is pictured in a prominent position in connection with a plaything which consists only of certain accessories as, for example, a "barbie doll" in a bathtub, the children do not perceive that the box contains only the bathtub, even if this is clearly indicated in the text on the package. If, on the other hand, the toy corresponds exactly to the picture, the fact that the package itself may be appreciably larger than its contents is of no great concern to the children.

ENDORSEMENTS IN ADVERTISING

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INTRODUCTION

The practice of promoting the sale of goods and services by means of representations expressing the views of prominent personalities, organisations, experts or other individuals has increased greatly in recent years. Among the many reasons for this, artificial product differentiation and the desire to reassure public opinion on the specific qualities of a product certainly play an important role. The widespread use of this advertising technique suggests that advertisers believe that endorsements offer an effective means of attracting the attention of consumers to buy their products. However, certain practices associated with the use of endorsements have given rise to some concern among government authorities, consumer groups and the advertising industry. It is the purpose of this report to examine the main types of advertising endorsements, the major areas of concern, the mandatory and voluntary controls employed, and to make some suggestions for action.

I. MAIN TYPES OF ADVERTISING ENDORSEMENTS

Endorsements, also known as "testimonials" can be defined as any advertising message which consumers are likely to believe reflects the opinions, beliefs, findings or experience of a party other than the sponsoring advertiser.

They appear in all the media used to communicate an advertising message and range from tacit approval by a personality appearing on a poster together with the product to a direct invitation on television by an anonymous individual to buy particular goods or services. In such cases the personality is used to gain the attention of the audience. Experts or other individuals are used to impart their specialist knowledge. Often endorsements combine the two features of the personality used as an "attention getter" and as an expert to persuade consumers to buy a product. Endorsements as a whole have the common characteristic that consumers are led to believe that the endorser is an expert or has particular knowledge to approve the product.

1. Personal endorsements

i) Leading personalities or experts

A particularly prevalent use of endorsements occurs with respect to the use of personalities or experts to promote products in their specialist field. For example, the use of a tennis player to promote a particular brand of tennis racquets. In addition personalities or experts can be used to promote products in a related field e.g. the racing driver expounding on the qualities of a motor vehicle accessory. Finally leading personalities can be used to endorse products or services in an unrelated field, serving mainly as "attention getters", e.g. athletes who promote the virtues of a bank, etc.

ii) Unknown persons

Such endorsements by unknown persons can take the form of a housewife in an apparently domestic setting promoting for example the qualities of a washing powder. An endorser may be identified by a name or initials or alternatively be just the man in the street.

2. Endorsements by organisations

Although used less than personal endorsements, advertisers realise that endorsements by organisations, particularly where they are experts, can have a persuasive effect. For example, where there may be some question in consumers' minds about the performance or quality of a product, endorsement by standards organisations will have an important effect in removing that doubt.

The present study concentrates on the main types of endorsements and does not deal with certain related advertising techniques or borderline cases such as the use of official signs and symbols (or mention like "By appointment to the Court..."), or the recommended use of certain products by manufacturers of related goods (e.g. a brand of motor oil or petrol recommended by a car manufacturer). Moreover, certain legal problems outside the consumer protection field, e.g. the unauthorized use of names, problems in connection with sponsoring agreements etc. are not discussed here. Another type of borderline case concerns the dramatisation of daily situations, i.e., the situation where actors simulate a real-life utilisation in a real-life setting (1).

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1) The U.S. Federal Trade Commission 'Guides concerning use of endorsements and testimonials in advertising' (Fed. Reg. Vol. 40, No. 99, 1975) does not consider such presentations as an endorsement.

II. MAJOR AREAS OF CONCERN

A. The accuracy of the endorsement

A basic problem arises in the use of endorsements where the endorsement is not accurately reproduced in a manner which reflects the statement or nature of support of the endorser for the product. The statement by the endorser can be taken out of context or does not accurately reflect his/her views. In some cases there has been a complete failure to obtain authorisation from the endorser before using either a statement or visual material. Some endorsements are also claimed to be unsolicited when this is not the case. This can be misleading if payment has been a material incentive to make the endorsement.

B. Misleading statements in endorsements

Whether an endorsement is misleading will depend on the expectations of consumers, taking into account the person of the endorser, the nature of the endorsement and the goods and services to which the endorsements relate. For example, consumers can be misled if a representation is made about a technical product on the basis of views expressed by an actor assuming the role of an independent technical expert. Endorsements have also been used to promote products in circumstances which are not representative of the typical circumstances in which a consumer would use the product or the characteristics selected did not reasonably relate to the normal use of the product. Where an endorsement is based on a small section of a range of products, consumers may be misled if it is not made clear that the endorsement does not extend to the full range of the products.

Problems have also been raised where the endorsement implies continued use or experience with a product and the endorsement has in fact been based on single, isolated, infrequent or occasional use and the endorser did not regularly use the product. The continued use problem can also arise where, for example, an advertisement is broadcast over an extended period of time and the endorser's assessment of the product has changed in the meantime or the product itself has changed.

The endorsement can also raise problems where the endorser has a connection with the advertiser or its product e.g. a financial interest in the company or as a supplier to the advertiser. There have also been cases where an endorsement is given by a so-called independent testing agency which was in fact financed or controlled by the advertiser.

The use of endorsements based on consumer surveys or comparative tests have been found to cause problems where the results have been achieved as a consequence of a biased questionnaire or an unfair representation of the results is given to support the case of the advertiser.

C. Endorsements and particular social groups

Several Member countries have noted the use of child heroes in advertising. A recent report in France by a Commission chaired by Madame Scrivener, former Secretary of State for Consumer Affairs, identified this as a major area which required improvement because there is continual exploitation of children by using figures that are well-known to promote products. In addition idols like football stars are used to stimulate children to consume products which, if taken in excess, may for example result in health problems. The use of such techniques can have a great influence on children who are particularly susceptible to sophisticated advertising practices.

D. Endorsements and products hazardous to health

The effectiveness of endorsements as an advertising technique has also been used with specific reference to the promotion of products the use of which gives rise to some debate. This is particularly relevant in the promotion of products where there is evidence of hazards to health. The most obvious examples are pharmaceutical products, alcohol and tobacco where for example sports personalities are used to support the advertiser's arguments that the health hazards are either non-existent or minimal.

III. LEGISLATION AND SELF-REGULATORY ARRANGEMENTS RELATED TO ENDORSEMENTS

Most Member countries have general legislation which prohibits unfair and deceptive advertising and this applies equally to the unfair use of endorsements in advertising. In addition some countries support this legislation with more specific provisions and/or guidelines on the application of the legislation. Finally several Member countries have specific controls operated in the context of regulation of the media. The following Chapter A deals with specific legislation and guidelines applied in Member countries. Chapter B refers to self-regulatory arrangements.

A. Specific legislation and guidelines relating to endorsements

In Australia, Section 53 of the Trade Practices Act 1974 states :

"A corporation shall not ...

c) represent that goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits they do not have ;

d) represent that the corporation has a sponsorship, approval or affiliation it does not have."

The provisions of section 53 of the Act have been applied to endorsements in advertising. For example in one case it was claimed that a microwave oven was made to the highest standard of manufacture and was fully tested and approved by the Standards Association of Australia, recognised as one of the most stringent safety authorities in the world and was completely safe. This was found to be completely and utterly false and the company was fined A $ 100.000.

The Trade Practices Commission has issued guidelines on its general approach to enforcing the relevant provisions of the Trade Practices Act :

> "Advertisers who represent that their goods, services or company are sponsored or approved by or affiliated with, an individual or organisation should ensure that they have the permission of the individual or organisation."
> "Such advertisers should also ensure that they do not represent sponsorship or approval or affiliation in excess of that permitted or given by the individual or organisation, for example, by representing that approval given to part only of the advertised goods or a certain aspect of the goods, extends to the whole of the goods. Also, in the case of an advertisement which states "every" article is tested, the advertisement must be literally true in that every article must be individually subjected to the stated test."

The Commission considers that advertisements incorporating personal endorsements or testimonials should identify the person making the endorsement or testimonial and state his or her qualifications. Also, advertisers should accurately reproduce the endorsement or testimonial given. Endorsements or testimonials claimed or represented to be unsolicited should not, in fact, have been solicited in any way, nor should the person making an unsolicited endorsement or testimonial receive payment or other consideration.

The Commission considers that representations in advertisements that leading personalities in a particular field use the advertised goods or services to maintain their status in that field (for example, a leading tennis player endorsing "X" brand tennis racquets) should not be made unless the personality does in fact use the advertised goods or services. The Commission does not, however, expect that where advertisers use models or actors to demonstrate the advertised goods, the models or actors must, in their day-to-day lives, use the goods they demonstrate. Nor does the Commission expect that where an advertisement uses a prominent personality in a humorous situation as a device to attract attention, the personality must, in his or her day-to-day life, use the advertised goods or services.

In Canada, section 36.1 of the Combines Investigation Act prohibits publishing testimonials or representing that another person

has made a test as to the performance, efficacy or length of life of an advertised product ; except

1. where the third person who gave the testimonial or made the test has himself previously published the testimonial or represented that he had made the test ;
2. where the person, prior to publishing the testimonial of representation that another had conducted a test, had secured in writing the third party's approval of the testimonial or representation as well as permission to publish or make it.

Furthermore, the representation or testimonial made or published by the person must accord with the representation or testimonial the third party had previously made, published or approved. An example of this could arise where a "quote" was taken out of context.

The Director of Investigation and Research, Consumer and Corporate Affairs, Canada, has set out his views on the application to endorsements of the general prohibition against false or misleading advertising. These views relate to requirements of actual test or use, continued use and approval, relevance of experience or use, partiality, payment of endorsers and the use of surveys on consumer preferences, attitudes or beliefs.

In Finland, under the Consumer Protection Act, endorsements must be truthful and must have been made by the endorsing person. Individuals should not have been engaged by the advertiser to appear as consumers when this is not the case. In certain cases the person who is responsible for advertising may also be held responsible for the contents of the "endorsement". The observance of these provisions is supervised by the Consumer Ombudsman.

In Japan, subject to the approval of the Fair Trade Commission under Section 10 of the Act against Unjustifiable Premiums and Misleading Representations, fair competition rules have been established voluntarily by enterprises or trade associations. With reference to endorsements in advertising, some of the rules regulate :

a) any representation which may cause misunderstanding such as that certain items are regularly purchased, endorsed or supported by any central or local governments or by such religious organisations as shrines or temples ;
b) any representation which may create misunderstanding that a commodity or service has won a prize.

In Germany, there are no specific statutory provisions governing endorsements in advertising in general. Rather, the general provisions of the Law against Unfair Competition apply which, inter alia, prohibit in general terms acts contrary to honest business practices and misleading statements in advertising. Special provisions on

advertising using the recommendations of third parties are contained in the Law concerning Advertising in the Medical Field in the Version of 18 October 1978 and in the Law on Foodstuffs and on Articles required for Daily Life.

According to Section 6 No. 1 of the Law concerning Advertising in the Medical Field, advertising for drugs is unlawful if expert opinions or certificates are published or mentioned which were given by persons who from the scientific and professional point of view are not qualified for this, which do not contain the name, the profession, or the residence of the expert or the issuer of the certificate and the date where the expert opinion or certificate has been issued. The same applies to other medicines, procedures, treatments and articles in so far as the advertising information refers to the diagnosis, cure or relief of diseases, physical injury or similar complaints of men and animals.

According to Section 11 No. 11 of the Law concerning Advertising in the Medical Field, advertising for drugs, procedures, treatments, articles or other medicines using statements of third parties, particularly letters of thanks or commendation or references to such statements is prohibited outside the profession.

According to Section 18 of the Law on Foodstuffs and on Articles Required for Daily Life, it is, inter alia, prohibited to use in advertising for foodstuffs

- references to medical recommendations or medical expert opinions ;
- statements of third parties, particularly letters of thanks or commendation as far as they refer to the cure or relief of diseases as well as references to such statements ;
- pictorial representation of persons in their working clothes or of persons undertaking activities in the medical and paramedical profession or in the pharmaceutical trade.

In the Netherlands, legislation makes general provisions for misleading statements in advertisements, though none specific to endorsements. This means that endorsements substantively come under new legislation which has been in force in the Netherlands since 14th July 1980, enabling persons to take action against a misleading advertisement if it is damaging or may be damaging to them. The crux of the ruling is that misleading advertising is an unlawful act for which compensation is due. If charges are brought, it falls to the person who has determined the content and the wording of the advertisement in its entirety or in part to prove that the information given is correct ; this deviates from the normal ruling regarding the onus of proof and thus puts the claimant at a powerful advantage. The court may choose to depart from this reversal of the onus of proof if it is considered unreasonable. The law also provides ways of dealing with misleading advertisements in the form of a request for a prohibition

of the publication of the advertisement, or a request for rectification. The new legislation is rounded off by the provision that parties who actually suffer damage or may do so as a result of an advertisement as well as organisations which protect public interests (though suffering no damage) both have the right to institute proceedings. One can imagine situations where the damage suffered by an individual consumer as a result of a misleading advertisement may be too minor for proceedings to be started, though seen in a wider context a case would be justified. In such circumstances the solution is for the case to be instituted by a consumer organisation.

A single regulation has so far been introduced to cover advertising of this nature in a more specific way. The Broadcasting Act provides for an Advertising Council, responsible among other things for laying down rules for the content of broadcast and TV advertisements. To this end the Council drafted the Official Rules for broadcast advertising in the Netherlands. The STER (Stichting Etherreclame = Foundation for Broadcast Advertising) is the organisation directly in charge of supervising the advertising messages. A person who has a message refused is entitled to lodge an appeal from the STER's decision with the Advertising Council. In addition, any person who feels that an advertising message approved by the STER or the Advertising Council for broadcasting infringes the Official Rules may submit a complaint to the Council. If the complaint is adjudged to be well-founded, it may be ruled that broadcasting of the advertisement concerned must cease by a certain date.

The above-mentioned Official Rules provide among other things that well-known persons from regular radio or TV programmes, such as announcers, newsreaders, consumer advisers, health advisers, etc. may not appear (obviously) in advertising messages. This provision was included in view of the universality of broadcast advertising as such, and the potential abuse of the authority and/or trust which certain persons, by virtue of their appearance in programmes or partly by virtue thereof may be regarded as possessing vis-à-vis certain groups of the public.

In New Zealand, the Consumer Information Act 1969 in Section 9 (5) states :

> "No person shall publish or cause to be published any advertisement that contains a representation to the effect that any goods have been approved, endorsed or recommended by any person who, or organisation that, members of the public might reasonably expect to be technically qualified to give an authoritative opinion in respect of the goods unless the person or organisation is in fact so qualified and has stated that he or it in fact approves, endorses, or recommends the goods. In any prosecution for an offence against this subsection, it shall be for the defendant

to prove that the person or organisation is so qualified and has stated that he or it approves, endorses, or recommends the goods."
"Note : "goods" includes services but excludes drugs, medical devices, agricultural chemicals, animal remedies, fertilisers or stock foods."

The Food and Drug Act 1969 in Section 10(1)(f) states :

"No person shall publish or cause or permit to be published any medical advertisement which directly or by implication claims, indicates, or suggests that the article or method of treatment advertised - (i) is a panacea or infallible ; or (ii) is or has been used or recommended by a person (other than the person by or on whose behalf the advertisement is published or whose services are advertised) practising chiropody, dentistry, medicine, midwifery, nursing, occupational therapy, optical dispensing, or physiotherapy, or practising as a chiropractor, dental technician, dietitian, or optician, or carrying on business as a pharmaceutical chemist, or by a person who is engaged in study or research in relation to any of those professions or occupations or the work performed by persons employed therein ; or (iii) being a therapeutic drug or a medical device or a method of treatment, has beneficially affected the health of a particular person or class of persons, whether named or not named and whether real or fictitious, referred to in the advertisement."

In Sweden, the Marketing Act 1975 provides a framework for the control of all types of marketing, including the use of endorsements. A number of cases have already been adjudicated by the Market Court, all of them initiated by the Consumer Ombudsman. The following cases are of particular interest :

a) In cigarette advertisements, Philip Morris Sweden AB used pictures showing a young man in an Alpine skiing environment. The Market Court shared the view of the Ombudsman that the model, through his looks, his clothes and status-orientated surroundings, probably would be regarded as an idol by many young people. The Court found that cigarette advertisements containing pictures of idols or other tone-setting persons could clearly have a suggestive effect not only on youths but on people in general. This applied also to pictures of anonymous models who may be invested with a pattern-forming role. Considering this and the health risks known to be connected with smoking, the Court stamped the advertisements as improper. (Market Court Decision No. 4/1971).
b) In publicity for a hair lotion the marketing firm cited a certificate from a private person, a Gothenburg lawyer, with certain assertions concerning the hair restoring effect of

the product. The Consumer Ombudsman held that these claims were misleading. Before the Market Court the firm maintained that it was not responsible for statements given by their customers. The Market Court however found that the firm was, as advertiser, responsible for the contents of its advertisement including the certificate. Since there was no evidence that the product had any effect on hair growth, the advertisement was found to be improper. (Market Court Decision No 23/1973).

c) In a brochure advertising a body-building appliance reference was made to an anonymous medical certificate. In its decision the Market Court stressed the need for care when using endorsements of that kind. In order to make it possible for the reader to check the degree of truth in the certificate and the competence of the person issuing it, the name of this person must be disclosed. The Court found that the use of an anonymous certificate was improper (Market Court Decision No 25/1973).

d) An insurance company advertised a type of insurance. In the advertisement certain people were depicted and their names given. Various statements concerning their experience of being insured with the company were attributed to these people. In fact, these statements were not authentic and the people depicted were presented under fictitious names. An inquiry initiated by the insurance company indicated that advertisements referring to endorsements had greater persuasive effects of the advertisement than other advertisements. The Court considered the advertisement misleading and improper. (Market Court Decision No 6/1978).

e) A health-food shop had in its shop window a natural remedy called Bio-Strath next to an article in a weekly magazine. The headline of the article stated that taking Bio-Strath would make it easier to survive radioactive radiation and cancer. The contents of the article itself were protected by the Freedom of the Press Act and consequently the Marketing Act was not applicable to the article as such. However, in this case, the Market Court found that the article, being exposed in the shop window next to the product, was being exploited in the marketing process. Therefore, the shop-owner had to prove, under the Marketing Act, that the claims of the article were true. No evidence substantiating the claims had been submitted to the Court, and therefore the marketing used was deemed misleading and improper. (Market Court Decision No 24/1978).

Moreover in 1979 the National Board for Consumer Policies issued guidelines for the marketing of alcoholic liquors and tobacco. Under

these guidelines which are to be regarded as recommendations, endorsements may not be used in conjunction with the marketing of alcohol or tobacco.

In Switzerland, in addition to the general legislation there is specific legislation which prohibits endorsements in certain situations. For example the Ordinance on Foodstuffs of 26 May 1936 prohibits the use of indications such as "recommended by doctors" while the Ordinance on Poisons of 23 December 1971 prohibits reference to certificates, results of tests or to recommendations by users.

In the United Kingdom, the use of a false endorsement in an advertisement for goods or the provision of services is an offence under the Trade Descriptions Act 1968. A consumer who suffers as a result of buying or using a product may in certain circumstances be able to obtain redress under civil law from a manufacturer who has made unjustified claims about the product (whether by means of an endorsement or otherwise).

Additional controls on endorsements in commercial radio and television advertisements have been imposed under the Code drawn up by the Independent Broadcasting Authority under the IBA Act 1973. This Code requires testimonials to be genuine and not to be used in a manner likely to mislead. Advertisers and their agencies must on request produce evidence to the IBA in support of any testimonials or claims. Children must not be used to give formalised testimony (although they may normally give spontaneous comments on matters in which they would have an obvious natural interest). No testimonials may be included in advertisements for medicine or treatment and no personality who commands the loyalty of the young may feature in a liquor advertisement.

In the United States, the regulatory controls applicable to endorsements in advertising are represented by the Federal Trade Commission's current and proposed guidelines on the use of endorsements and testimonials in advertising (Annex II). Guidelines do not have the force and effect of law ; a failure to adhere to the standards set out in the guidelines will not subject the party to civil penalties under the Federal Trade Commission Act. Guidelines therefore act as a form of notice to the industry that the Commission considers particular acts or practices to be deceptive or unfair, and that, if a party violates the standards set forth in the guidelines, he may be subject to suit by the Commission under Section 5 of the Act. The end result of such a suit would be entry of a cease and desist order against the respondent which, if thereafter validated, would subject the party to civil penalties.

The basic case involving endorsements in advertising is U.S. v. John J. Fulton Company, 33 F 2d 506 (2d Cir. 1929). The case involved an action against the seller of a drug who advertised that many letters

had been received from physicians reporting cures of several specific diseases through the use of drug. The respondent actually possessed such letters, but medical evidence proved that the product would not perform as advertised. The seller argued that the possession of the endorsing letters of physicians was a complete defense because the seller, itself, made no claim about the product. The court, however, determined that the advertiser could not avoid liability by hiding behind a "doctors say" statement. The Court stated :

> Couched in such language, undoubtedly the printed matter makes a more persuasive appeal to the credulity of sufferers of these diseases than if the representations thus implied were made directly upon the authority alone of the proprietors, and for that reason they are not less, but more, obnoxious to the law (33 F 2d 506, 507 ...).

Two propositions seem to flow from the Fulton decision. First, any endorsement used by the seller becomes thereby a representation of the seller. He is responsible for its accuracy, and his responsibility cannot be evaded by limiting the representation to the opinion of the endorser. Second, the Fulton case suggests that the use of endorsements to accomplish deception amounts to a more serious violation of the law than mere misrepresentation under the name of the seller alone. In Moretrench Corp. v. FTC, 127 F 2d 792 (2d Cir 1942) the Court observed that even endorsements which may have amounted to mere "puffery" would not be exempted from the requirement that endorsements be absolutely accurate. In R.J. Reynolds v. FTC, 192 F 2d 535 (7th Cir. 1951), the Court sustained a commission order prohibiting testimonials that contain claims that the Commission had found to be false when made by the advertiser. In National Dynamics Corporation v. FTC, 82 FTC 488 (1972), remanded 492 F 2d 1333 (2d Cir. 1973), cert. denied, 419 US 933 (1974) and in Porter & Dietsch, Inc. 90 FTC 770 (1977), aff'd, No 78-1324 (7th Cir. Aug. 8, 1979), the Commission addressed the capacity of consumer endorsements of product performance to represent the "typical" performance that the average consumer can expect. Final orders in both matters are designed to present the deceptive use of exceptional performance that was realised by only a few consumers. The staff of the Federal Trade Commission is of the view that in certain instances endorsers themselves may be held liable under the Federal Trade Commission Act for engaging in unfair or deceptive acts or practices by rendering endorsements in the absence of an appropriate effort to determine whether there is support for the claim they are making. This position led to a consent order entered into by a well-known celebrity (Pat Boone) who endorsed an acne preparation (Cooga-Mooga, File No 772-3051), and a consent order (Gordon Cooper, File No 792-3060). Also, in the past, the Commission has displayed particular concern with respect to endorsements directed to

children. In particular, the use of a well-known comic book hero, Spiderman, as an endorser of vitamins led to Commission action which resulted in a consent order against Hudson Pharmaceutical Corp., 89 FTC 82 (1975). Similar concern led the Commission to obtain a consent order from General Foods Corporation, 89 FTC 831 (1975), which featured in its advertising a well-known outdoorsman picking and eating wild-growing fruits and berries with the advertiser's cereal. The Commission charged that such endorsements have the tendency or capacity to influence children to eat plants which they find growing, or in natural surroundings, some of which may be harmful if eaten.

B. Self-regulatory arrangements

Most Member countries have voluntary codes of advertising which are formulated by the advertising industry. These voluntary codes often include provisions relating to the use of endorsements. Most of the general provisions are based on, or similar to, relevant provisions of the International Code of Advertising Practice prepared by the International Chamber of Commerce.

> "Article 6
> Advertisements should not contain or refer to any testimonial or endorsement unless it is genuine and related to the experience of the person giving it. Testimonials or endorsements which are obsolete or otherwise no longer applicable should not be used."
>
> "Article 8
> Advertisements should not portray or refer to any person, whether in a private or a public capacity, unless prior permission has been obtained, nor should advertisements with prior permission depict or refer to any person's property in a way likely to convey the impression of a personal endorsement."

An Annex to the ICC Code recommends that advertisements for medical treatment should not contain any reference to doctors or medical authority unless such reference is capable of substantiation by independent evidence (B.2(2)(b)). They should also not contain any visual presentation likely to convey an impression of independent medical advice or recommendation unless such advice or recommendation is capable of substantiation (B.2(2)(c)).

Several Member countries including Australia, Canada, France, Germany, Ireland and New Zealand have also established voluntary regulations designed to regulate the use of individuals endorsing products directed to children. For example, the Canadian Association of Broadcasters' Code for Advertising to Children states :

> "Persons and characters well-known to children must not be used to endorse products, premiums or services, except for professional actors or announcers who are not featured on programs intended for children."

In France, the "Bureau de Vérification de la Publicité" (Advertising Supervisory Board), on a recommendation concerning advertising directed to children, points out that child heroes (e.g. characters from comic strips, tables, fairy tales) and famous functional characters shall not be used in advertising to endorse a product or its use.

Voluntary controls also deal with endorsements of medical products. Such controls exist in Australia, Belgium, Canada, Finland, Germany, Ireland and Japan. For example, in Ireland, the code of practice established by Radio Telefis Eireann (RTE) the national television and radio broadcasting services states :

> "No advertisement for a medicine or treatment may include a testimonial or be presented by persons well-known in public life, sport, entertainment, etc. Presentations or statements which give the impression of professional advice or recommendation by doctors, dentists, nurses, chemists, for medicines and treatments are specifically precluded."

In addition, voluntary controls exist for use of endorsements in advertising of tobacco and alcohol. In Germany, for example, the pictorial representation of competitive athletes drinking alcoholic beverages or inviting people to drink these beverages is prohibited. In Australia, the Media Council Voluntary Advertising Code for Cigarettes in Australia states

> "Advertisements shall not include well-known past or present athletes or sportsmen smoking cigarettes nor anyone smoking cigarettes who is participating or has just participated in physical activity requiring stamina or athletic conditioning beyond that of normal recreation."

Information is available on the application of voluntary codes in endorsements from two countries : Belgium and the Netherlands.

In Belgium, the Advertising Council took up the case of a firm selling medicinal products whose products were endorsed by a client who was cured after using the products in question. The Council found that while the endorsement was genuine, it was in practice solicited and virtually dictated to the endorser who was happy to sign the declaration. The result of Council's enquiry was that the advertiser agreed to modify his publicity. In another case a famous cyclist was shown smoking a particular brand of cigarettes. The enquiry conducted by the Council showed that the endorsement was genuine but decided that because of the need for social responsibility in advertising, it was not acceptable for a famous sporting personality (notwithstanding that at the time he was no longer practising the sport) who had a clear influence on youth to be associated with smoking. The advertising was then discontinued.

In the Netherlands, two rulings have been made by a self-regulatory body, the Advertising Code Commission which is responsible for ensuring that the Netherlands Code of Advertising is properly observed by advertisers, especially in the printed media. The rulings were given on 31st January, 1979 in response to two complaints by the consumer organisation "Konsumenten Kontakt" about advertisements by a cigarette manufacturer. In these advertisements, which were for low-tar nicotine cigarettes, use was made of the famous footballer Johan Cruyff. The caption above one advertisement read "smoking sensibly". Underneath was a photograph of Cruyff smoking. The caption of the other advertisement ran "Things that Johan Cruyff always has on him". Underneath was another photograph of Cruyff, and a number of personal items including a packet of cigarettes. In both cases the Code Commission upheld Konsumenten Kontakt's complaint. With regard to the first advertisement, the Commission considered among other things that the words "smoke sensibly" are open to the interpretation that it is sensible to smoke the cigarettes shown, and that this incorrect interpretation is reinforced by the fact that the words are spoken by a famous footballer. In the second case, the Commission felt there was a risk that many persons would offer less resistance to the temptation to smoke now that even a man like Johan Cruyff is seen to smoke low-tar cigarettes. The Commission therefore ruled that both advertisements were misleading and incompatible with the Netherlands Code of Advertising.

The Special Code of Conduct, the product of self-regulatory activities, is a supplement to the Dutch Advertising Code for special groups of products, which includes specific rules for alcohol. Section 9 prohibits members of the medical profession from recommending alcoholic beverages, the aim of the ruling being that alcohol is not associated with health. Section 6 provides that there may be no association whatsoever with driving and sports in a statement in an advertisement, and that therefore includes endorsements. Section 8 is even more explicit in stating that "they may not show young people or minors drinking or encouraging the consumption of alcohol".

Public advertising of registered medicines is subject to the prior approval of the Council for the Approval of Public Recommendations of Registered Medicines (KOAGG). The Council is a self-regulating body comprising manufacturers, importers, advertising agencies and the Postal and Telecommunications Service. The criteria adopted by the Council relate only to advertisements directed at the consumer. For example, advertisements for registered medicines by means of testimonials, letters of thanks etc. are prohibited. Even covert recommendations may be banned. The details are laid down in the KOAGG's "Guidelines" and "Practical Hints".

IV. RECENT DEVELOPMENTS IN MEMBER COUNTRIES

Most of the recent concern over the use of endorsements in advertising has been directed towards effects on children and endorsements for products such as tobacco and alcohol, even though not many countries have gone as far as Norway or Finland to entirely ban advertising for these products.

In Australia, the Senate Standing Committee on Education and the Arts in its Report "Children and Television" expressed its disapproval of advertising by comperes of children's television shows because of the emotional relationship the children have with them. A similar attitude was expressed by the Australian Broadcasting Tribunal. The Senate Standing Committee further expressed its disapproval of the advertising of alcoholic beverages by sporting personalities since this acts as an incentive to early drinking through peer group pressure. The Government announced in May 1980 that the Senate Committee's recommendations have been referred to the Australian Broadcasting Tribunal in relation to the development of new advertising guidelines. The Senate Standing Committee on Social Welfare in its report "Drug Problems in Australia - An Intoxicated Society" expressed concern about the advertising of alcohol and tobacco products by sporting personalities. The Government announced in March 1980 that it will seek extension of the existing voluntary advertising code to discourage the use of sporting and other personalities in the promotion of alcoholic beverages. The existing code for advertising cigarettes already contains a similar restraint on the use of sporting personalities.

In Belgium, on the basis of the law of 24th January, 1977 concerning the protection of the health of consumers of foodstuffs and other products, the Minister of Public Health is proposing to introduce a law which would allow the King to ban in whole or in part advertising of tobacco, tobacco based and similar products. This law would also ban for the same products use of endorsements or statements which relate to an individual other than the inventor of a manufacturing process of the product concerned.

In Ireland, the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978 empowers the Minister for Health to make regulations controlling the advertising of tobacco products. Regulations are currently being prepared and it is likely that the use of personal testimonials in advertisements for tobacco products will be prohibited. Arrangements are also being made to revise and improve the voluntary controls in relation to all forms of advertising including that based on endorsements or testimonials.

In the Netherlands, an inter-ministerial committee is currently engaged in studying in what way the advertising of tobacco products can be restricted. One possibility being considered is prohibiting the use of endorsements by well-known personalities.

In Norway, a recent study in the Consumer Ombudsman's office concluded that advertisers are responsible for endorsements given by experts, consumers, sports heroes, etc. They cannot escape responsibility merely by relying on another person's evaluation. Marketing messages using testimonials have to be treated in the same way as if the advertiser himself had made the statement. If there exists disagreement among experts about a subject, advertisers cannot use endorsements from the side favouring his interest without giving the opposite evaluation the same attention and space.

The study considered that the mere use of well-known persons as "attention getters" in a way which clearly is not an evaluation of the advertised brand or firm is not illegal. Particular care should be taken with messages directed towards children and adolescents especially when endorsements are given by an individual who has the respect of children.

In the United States, the Federal Trade Commission will shortly act upon staff proposals to expand the existing guidelines on the use of endorsements and testimonials in advertising to include provisions beyond those relating to endorsements by experts and organisations. The new proposals on endorsements by consumers and celebrities set standards for accuracy in all endorsements regardless of the nature of the endorser.

V. CONCLUSIONS AND SUGGESTIONS FOR ACTION

A. Conclusions

The widespread use of endorsements in all Member countries indicates the advertising industry's belief that endorsements are highly effective in promoting goods and services. The use of endorsers in advertising in order to attract the attention of consumers is not in itself a practice considered undesirable "per se". However, several Member countries have taken specific action concerning unfair use of endorsements for products about which there has been some debate.

The fact that a representation is made by an endorser does not eliminate the necessity for all parties involved in this advertising to maintain the standards that otherwise apply to advertising messages.

In most Member countries general legislation prohibiting deceptive advertising and unfair marketing practices applies to endorsements in advertising as well. However, in several Member countries, more specific standards or guidelines are successfully dealing with the problems encountered in connection with endorsements in advertising. The similarity of the problems raised suggests that the adoption of the following standards and principles would be beneficial to consumers.

B. Suggestions for action

Member countries should ensure that voluntary or mandatory standards of advertising exist which incorporate the following principles :

1. General standards for endorsements in advertising

To the extent that endorsements in advertising are permitted, they should be such as not likely to mislead the consumer. They should be relevant to the characteristics or to the use of the product or service as sold to consumers. Endorsements should not be used to make or imply factual claims which are not capable of being substantiated. Advertisers should be responsible for the veracity of the endorsements.

2. Endorsements of tobacco and alcoholic beverages

Persons, with whom young people are likely to identify themselves, e.g. sporting personalities, should not be used to endorse alcoholic beverages or tobacco products.

3. Endorsements of medicines and medical treatment

No person known from public life, sport, entertainment etc. should be used to endorse medicines or medical treatments. Representations or statements which give the impression of professional advice or recommendation by doctors, dentists, nurses, chemists, etc. should not be made unless they can be substantiated by independent evidence.

4. Endorsements by experts or expert organisations

Particularly high standards are required of endorsements by experts or expert organisations in view of the trust placed in such independent assessments. Advertisers should not be allowed to make reference to expert evidence unless specifically allowed to do so.

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